

SENATE BILL 853

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By: **Senator Muse**

Introduced and read first time: February 11, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Landlord and Tenant – Stay of Eviction – Reasons for Nonpayment Beyond**
3 **Tenant’s Control**

4 FOR the purpose of authorizing a judge, in an action for repossession of residential
5 premises for failure to pay rent, to extend the time for the surrender of the
6 premises under certain circumstances; authorizing a judge to grant an
7 extension for up to a certain period of time after the trial if a certain employer of
8 the tenant who is the major wage earner certifies that the tenant was laid off or
9 furloughed for reasons beyond the tenant’s control; authorizing an
10 administrative judge of any district to stay the execution of a warrant of
11 restitution of a residential property for up to a certain period of time under
12 certain circumstances; authorizing the administrative judge to stay execution
13 because of the death of the tenant who is the major wage earner or the layoff or
14 furlough of the tenant for reasons beyond the tenant’s control; requiring the
15 administrative judge to conduct a hearing and receive testimony and affidavits
16 from both parties before granting a stay; requiring the execution of the warrant
17 of restitution for which the stay was granted to be given priority and completed
18 within a certain period of time after the end of the stay; and generally relating
19 to a judicial stay of eviction for certain reasons beyond a tenant’s control.

20 BY repealing and reenacting, with amendments,
21 Article – Real Property
22 Section 8–401
23 Annotated Code of Maryland
24 (2003 Replacement Volume and 2009 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

27 **Article – Real Property**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 8-401.

2 (a) Whenever the tenant or tenants fail to pay the rent when due and
3 payable, it shall be lawful for the landlord to have again and repossess the premises.

4 (b) (1) Whenever any landlord shall desire to repossess any premises to
5 which the landlord is entitled under the provisions of subsection (a) of this section, the
6 landlord or the landlord's duly qualified agent or attorney shall file the landlord's
7 written complaint under oath or affirmation, in the District Court of the county
8 wherein the property is situated:

9 (i) Describing in general terms the property sought to be
10 repossessed;

11 (ii) Setting forth the name of each tenant to whom the property
12 is rented or any assignee or subtenant;

13 (iii) Stating the amount of rent and any late fees due and
14 unpaid;

15 (iv) Requesting to repossess the premises and, if requested by
16 the landlord, a judgment for the amount of rent due, costs, and any late fees;

17 (v) If applicable, stating that, to the best of the landlord's
18 knowledge, the tenant is deceased, intestate, and without next of kin; and

19 (vi) If the property to be repossessed is an affected property as
20 defined in § 6-801 of the Environment Article, stating that the landlord has registered
21 the affected property as required under § 6-811 of the Environment Article and
22 renewed the registration as required under § 6-812 of the Environment Article and:

23 1. A. If the current tenant moved into the property
24 on or after February 24, 1996, stating the inspection certificate number for the
25 inspection conducted for the current tenancy as required under § 6-815(c) of the
26 Environment Article; or

27 B. On or after February 24, 2006, stating the inspection
28 certificate number for the inspection conducted for the current tenancy as required
29 under § 6-815(c), § 6-817(b), or § 6-819(e) of the Environment Article; or

30 2. Stating that the owner is unable to provide an
31 inspection certificate number because:

32 A. The owner has requested that the tenant allow the
33 owner access to the property to perform the work required under Title 6, Subtitle 8 of
34 the Environment Article;

1 B. The owner has offered to relocate the tenant in order
2 to allow the owner to perform work if the work will disturb the paint on the interior
3 surfaces of the property and to pay the reasonable expenses the tenant would incur
4 directly related to the relocation; and

5 C. The tenant has refused to allow access to the owner or
6 refused to vacate the property in order for the owner to perform the required work.

7 (2) For the purpose of the court's determination under subsection (c) of
8 this section the landlord shall also specify the amount of rent due for each rental
9 period under the lease, the day that the rent is due for each rental period, and any late
10 fees for overdue rent payments.

11 (3) The District Court shall issue its summons, directed to any
12 constable or sheriff of the county entitled to serve process, and ordering the constable
13 or sheriff to notify the tenant, assignee, or subtenant by first-class mail:

14 (i) To appear before the District Court at the trial to be held on
15 the fifth day after the filing of the complaint; and

16 (ii) To answer the landlord's complaint to show cause why the
17 demand of the landlord should not be granted.

18 (4) (i) The constable or sheriff shall proceed to serve the summons
19 upon the tenant, assignee, or subtenant or their known or authorized agent as follows:

20 1. If personal service is requested and any of the persons
21 whom the sheriff shall serve is found on the property, the sheriff shall serve any such
22 persons; or

23 2. If personal service is requested and none of the
24 persons whom the sheriff is directed to serve shall be found on the property and, in all
25 cases where personal service is not requested, the constable or sheriff shall affix an
26 attested copy of the summons conspicuously upon the property.

27 (ii) The affixing of the summons upon the property after due
28 notification to the tenant, assignee, or subtenant by first-class mail shall conclusively
29 be presumed to be a sufficient service to all persons to support the entry of a default
30 judgment for possession of the premises, together with court costs, in favor of the
31 landlord, but it shall not be sufficient service to support a default judgment in favor of
32 the landlord for the amount of rent due.

33 (5) Notwithstanding the provisions of paragraphs (1) through (4) of
34 this subsection, in Wicomico County, in an action to repossess any premises under this
35 section, service of process on a tenant may be directed to any person authorized under
36 the Maryland Rules to serve process.

1 (6) (i) Notwithstanding the provisions of paragraphs (3) through
2 (5) of this subsection, if the landlord certifies to the court in the written complaint
3 required under paragraph (1) of this subsection that, to the best of the landlord's
4 knowledge, the tenant is deceased, intestate, and without next of kin, the District
5 Court shall issue its summons, directed to any constable or sheriff of the county
6 entitled to serve process, and ordering the constable or sheriff to notify the occupant of
7 the premises or the next of kin of the deceased tenant, if known, by personal service:

8 1. To appear before the District Court at the trial to be
9 held on the fifth day after the filing of the complaint; and

10 2. To answer the landlord's complaint to show cause why
11 the demand of the landlord should not be granted.

12 (ii) 1. The constable or sheriff shall proceed to serve the
13 summons upon the occupant of the premises or the next of kin of the deceased tenant,
14 if known, as follows:

15 A. If any of the persons whom the sheriff is directed to
16 serve are found on the property or at another known address, the sheriff shall serve
17 any such persons; or

18 B. If none of the persons whom the sheriff is directed to
19 serve are found on the property or at another known address, the constable or sheriff
20 shall affix an attested copy of the summons conspicuously upon the property.

21 2. The affixing of the summons upon the property shall
22 conclusively be presumed to be a sufficient service to all persons to support the entry
23 of a default judgment for possession of the premises, together with court costs, in favor
24 of the landlord, but it shall not be sufficient service to support a default judgment in
25 favor of the landlord for the amount of rent due.

26 (c) (1) If, at the trial on the fifth day indicated in subsection (b) of this
27 section, the court is satisfied that the interests of justice will be better served by an
28 adjournment to enable either party to procure their necessary witnesses, the court
29 may adjourn the trial for a period not exceeding 1 day, except with the consent of all
30 parties, the trial may be adjourned for a longer period of time.

31 (2) (i) The information required under subsection (b)(1)(vi) of this
32 section may not be an issue of fact in a trial under this section.

33 (ii) If, when the trial occurs, it appears to the satisfaction of the
34 court, that the rent, or any part of the rent and late fees are actually due and unpaid,
35 the court shall determine the amount of rent and late fees due as of the date the
36 complaint was filed, if the trial occurs within the time specified by subsection (b)(3) of
37 this section.

1 (iii) 1. If the trial does not occur within the time specified in
2 subsection (b)(3)(i) of this section and the tenant has not become current since the
3 filing of the complaint, the court, if the complaint so requests, shall enter a judgment
4 in favor of the landlord for possession of the premises and determine the rent and late
5 fees due as of the trial date.

6 2. The determination of rent and late fees shall include
7 the following:

8 A. Rent claimed in the complaint;

9 B. Rent accruing after the date of the filing of the
10 complaint;

11 C. Late fees accruing in or prior to the month in which
12 the complaint was filed; and

13 D. Credit for payments of rent and late fees made by the
14 tenant after the complaint was filed.

15 (iv) In the case of a residential tenancy, the court may also give
16 judgment in favor of the landlord for the amount of rent and late fees determined to be
17 due together with costs of the suit if the court finds that the residential tenant was
18 personally served with a summons.

19 (v) In the case of a nonresidential tenancy, if the court finds
20 that there was such service of process or submission to the jurisdiction of the court as
21 would support a judgment in contract or tort, the court may also give judgment in
22 favor of the landlord for:

23 1. The amount of rent and late fees determined to be
24 due;

25 2. Costs of the suit; and

26 3. Reasonable attorney's fees, if the lease agreement
27 authorizes the landlord to recover attorney's fees.

28 (vi) A nonresidential tenant who was not personally served with
29 a summons shall not be subject to personal jurisdiction of the court if that tenant
30 asserts that the appearance is for the purpose of defending an in rem action prior to
31 the time that evidence is taken by the court.

32 (3) The court, when entering the judgment, shall also order that
33 possession of the premises be given to the landlord, or the landlord's agent or attorney,
34 within 4 days after the trial.

1 (4) **(I)** The court may, upon presentation of a certificate signed by a
2 physician certifying that surrender of the premises within this 4-day period would
3 endanger the health or life of the tenant or any other occupant of the premises, extend
4 the time for surrender of the premises as justice may require but not more than 15
5 days after the trial.

6 **(II) IN THE CASE OF A RESIDENTIAL TENANCY, THE COURT**
7 **MAY, UPON PRESENTATION OF A CERTIFICATE SIGNED BY THE EMPLOYER OF**
8 **THE TENANT WHO IS THE MAJOR WAGE EARNER CERTIFYING THAT THE MAJOR**
9 **WAGE EARNER WAS LAID OFF OR FURLOUGHED BECAUSE OF REASONS BEYOND**
10 **THE TENANT'S CONTROL, EXTEND THE TIME FOR SURRENDER OF THE PREMISES**
11 **AS JUSTICE MAY REQUIRE BUT NOT MORE THAN 30 DAYS AFTER THE TRIAL.**

12 (5) However, if the tenant, or someone for the tenant, at the trial, or
13 adjournment of the trial, tenders to the landlord the rent and late fees determined by
14 the court to be due and unpaid, together with the costs of the suit, the complaint
15 against the tenant shall be entered as being satisfied.

16 (d) (1) (i) Subject to the provisions of [paragraph (2)] **PARAGRAPHS**
17 **(2) AND (3)** of this subsection, if judgment is given in favor of the landlord, and the
18 tenant fails to comply with the requirements of the order within 4 days, the court
19 shall, at any time after the expiration of the 4 days, issue its warrant, directed to any
20 official of the county entitled to serve process, ordering the official to cause the
21 landlord to have again and repossess the property by putting the landlord (or the
22 landlord's duly qualified agent or attorney for the landlord's benefit) in possession
23 thereof, and for that purpose to remove from the property, by force if necessary, all the
24 furniture, implements, tools, goods, effects or other chattels of every description
25 whatsoever belonging to the tenant, or to any person claiming or holding by or under
26 said tenant.

27 (ii) If the landlord does not order a warrant of restitution within
28 sixty days from the date of judgment or from the expiration date of any stay of
29 execution, whichever shall be the later:

30 1. The judgment for possession shall be stricken; and

31 2. The judgment shall be applied to the number of
32 judgments necessary to foreclose a tenant's right to redemption of the leased premises
33 as established in subsection (e)(2) of this section unless the court in its discretion
34 determines that the judgment may not apply for purposes of subsection (e)(2) of this
35 section.

36 (iii) If the landlord orders a warrant of restitution but takes no
37 action on the warrant within 60 days from the later of the date the court issues the
38 order for the warrant or the date as otherwise extended by the court:

1 1. The warrant of restitution shall expire and the
2 judgment for possession shall be stricken; and

3 2. The judgment shall be applied to the number of
4 judgments necessary to foreclose a tenant's right to redemption of the leased premises
5 as established in subsection (e)(2) of this section unless the court in its discretion
6 determines that the judgment may not apply for purposes of subsection (e)(2) of this
7 section.

8 (2) (i) The administrative judge of any district may stay the
9 execution of a warrant of restitution of a residential property, from day to day, in the
10 event of extreme weather conditions.

11 (ii) When a stay has been granted under this paragraph, the
12 execution of the warrant of restitution for which the stay has been granted shall be
13 given priority and completed within 3 days after the extreme weather conditions
14 cease.

15 **(3) (I) THE ADMINISTRATIVE JUDGE OF ANY DISTRICT MAY**
16 **STAY THE EXECUTION OF A WARRANT OF RESTITUTION OF A RESIDENTIAL**
17 **PROPERTY FOR UP TO 30 DAYS IN THE EVENT OF THE DEATH OF THE TENANT**
18 **WHO IS THE MAJOR WAGE EARNER OR THE LAYOFF OR FURLOUGH OF THE**
19 **TENANT WHO IS THE MAJOR WAGE EARNER FOR REASONS BEYOND THE**
20 **TENANT'S CONTROL.**

21 **(II) BEFORE GRANTING A STAY UNDER THIS PARAGRAPH,**
22 **THE ADMINISTRATIVE JUDGE SHALL CONDUCT A HEARING AND RECEIVE**
23 **TESTIMONY AND WRITTEN AFFIDAVITS FROM THE LANDLORD AND THE TENANT.**

24 **(III) WHEN A STAY HAS BEEN GRANTED UNDER THIS**
25 **PARAGRAPH, THE EXECUTION OF THE WARRANT OF RESTITUTION FOR WHICH**
26 **THE STAY HAS BEEN GRANTED SHALL BE GIVEN PRIORITY AND COMPLETED**
27 **WITHIN 3 DAYS AFTER THE END OF THE STAY.**

28 (e) (1) Subject to paragraph (2) of this subsection, in any action of
29 summary ejection for failure to pay rent where the landlord is awarded a judgment
30 giving the landlord restitution of the leased premises, the tenant shall have the right
31 to redemption of the leased premises by tendering in cash, certified check or money
32 order to the landlord or the landlord's agent all past due amounts, as determined by
33 the court under subsection (c) of this section, plus all court awarded costs and fees, at
34 any time before actual execution of the eviction order.

35 (2) This subsection does not apply to any tenant against whom 3
36 judgments of possession have been entered for rent due and unpaid in the 12 months
37 prior to the initiation of the action to which this subsection otherwise would apply.

1 (f) (1) The tenant or the landlord may appeal from the judgment of the
2 District Court to the circuit court for any county at any time within 4 days from the
3 rendition of the judgment.

4 (2) The tenant, in order to stay any execution of the judgment, shall
5 give a bond to the landlord with one or more sureties, who are owners of sufficient
6 property in the State of Maryland, with condition to prosecute the appeal with effect,
7 and answer to the landlord in all costs and damages mentioned in the judgment, and
8 other damages as shall be incurred and sustained by reason of the appeal.

9 (3) The bond shall not affect in any manner the right of the landlord to
10 proceed against the tenant, assignee or subtenant for any and all rents that may
11 become due and payable to the landlord after the rendition of the judgment.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2010.